***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.No.21899 OF 2007

% 28-01-2005

M/s.Sri Sai Agritech. **.. Petitioner**

And

$ The Commissioner of Agriculture, Andhra Pradesh and another

..

Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri S.V.Bhatt

^ Counsel for respondents : G. P. for Agriculture

?CASES REFERRED :

1 (2003) 6 SCC 675

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P.No.21899 of 2007
Date: 05 -12 -2007

Between:
M/s. Sri Sai Agritech,
Plot No.254, Shop No.1,
Sri Venkateswara Nilayam,
Bhageeratha Colony, Mahabubnagar,
rep. by its Proprietor K.Naga Raju

Petitioner

And

The Commissioner of Agriculture,
Andhra Pradesh, Hyderabad and another

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.21899 of 2007

ORDER:

1. This court ordered notice before admission on 12-10-2007. Counter affidavit is filed.

2. M/s. Sri Sai Agrictech, represented by its proprietor, filed the present writ petition for a writ of Mandamus to declare the Proceedings No. SR Cell (1) 264/2007, dated 04.07.2007 of the second respondent and as confirmed by the first respondent in proceedings dated 18.08.2007, as being illegal, irregular, unreasonable, arbitrary exercise of powers in gross violation of principles of natural justice apart from being contrary to the provisions of the Seeds Act, 1966 (hereinafter in short referred to as 'the Seeds Act') and the Seeds (Control) Order, 1983 (hereinafter in short referred to as 'the Control Order') and consequently, set aside the same with a further direction to the respondents to restore the licence and renew the same and pass such other orders.

3. Sri S.V.Bhatt, the learned counsel representing the writ petitioner, had taken this court through the affidavit and the counter affidavit and also the relevant clauses of the Control Order and would submit that in view of the facts and circumstances, it is clear that an opportunity of being heard as specified under clause 15 of the Control Order had not been complied with. It would be appropriate to set-aside these orders and give an opportunity to the petitioner to

make an application in accordance with law and let the competent authority consider such application not being influenced by the observation, if any made already, in the proceedings in question. The learned counsel had drawn the attention of this court to the relevant clauses of the Control Order and also the relevant provisions of the Seeds Act.

4. Per contra, the learned Government Pleader for Agriculture had taken this court through the contents of the counter affidavit filed by the second respondent and would maintain that in the light of the reasons recorded, this is not a fit case to be interfered with by a writ court. The learned Government Pleader also would maintain that virtually what had been prayed is a writ of certiorari though in the relief column it was specified as a writ of Mandamus and in the light of the facts and circumstances, this is not a fit case where the certiorari jurisdiction to be exercised.

5. Heard the counsel and perused the material placed before this court.

6. It is averred that the petitioner is an agricultural graduate and ventured to start self employment and therefore, started a seeds business in the name and style as M/s. Sri Sai Agritech, plot No.254, Shop No.1, Sri Venkateshwara Nilayam, Bhagiratha Colony, Mahabubnagar. The petitioner obtained a licence from the competent authority-second respondent i.e. the licence to carry on the business of the dealer in seeds vide licence bearing No.83 dated 26.06.2001. As per the licence, the sale premises is Plot No.254, Shop No.1, Sri Venkateswara Nilayam, Bhagiratha Colony, Mahabubnagar. The processing, packing and storage premises for the business is Door No.1-133, Amistapur Village, Bhoothpur Mandal, Mahabubnagar District.

7. It is also stated that the Control Order was issued by the Central Government under the powers conferred by Section 3 of the Essential

Commodities Act, 1955. The said Order came into force on 30.12.1983. Clause 3 of the Control Order deals with the dealer to obtain licence and no person shall carry on the business of selling, exporting or importing seeds at any place except under and in accordance with the terms and conditions of the licence granted to him. Clause 6 of the Control Order prescribes that the validity of licence is for a period of three years from the date of its issue and clause 7 of the Control Order deals with the renewal of licence. Form-'A' is a form of application to obtain dealers' licence and this form is under clause 4 of the Control Order. Form-'B' deals with the terms and conditions of licence. Form-'C' deals with the renewal of licence under clause 7 of the Control Order.

8. It is also stated that the petitioner submitted an application for a licence and the same was granted on 26-06-2001 and it was renewed from time to time and it was renewed up to 25.6.2007.

9. It is also stated that on 15.03.2007 at about 12.30 p.m. the Assistant Director of Agriculture, Jedcharla, Mahabubnagar District has conducted the inspection at the petitioner's processing, packing and storage premises at Door No.1-33, Amistapur, Bhoothpur Mandal, Mahabubnagar District and seized the seeds by conducting a Panchanama and taken sample of seeds of Sindhu Hybrid cotton bulk seed and Dharma bulk seed and sent the samples to the laboratory for testing. The Seed Inspector attached to the office of the Assistant Director, Jedcharla submitted a report in Form No. III pointing out the defects of the seed packets and issued seizure order in Form No. IV and as per the order, five items were seized.

10. Further it is averred that the petitioner submitted a representation to the Commissioner and Director of Agriculture, Hyderabad, with a request to take another sample since the Assistant Director of Agriculture, who has taken the

samples has a grudge against the petitioner and accordingly the Commissioner and Director of Agriculture, Hyderabad has issued orders on 31.03.2007 by deputing three officers as special squad. They are Viz., Sri N.S.Saxena, Deputy Director of Agriculture, Sri V.Siva Prasad, Assistant Director of Agriculture, Office of the Commissioner and Director of Agriculture and Sri P.Jaya Krishna and A.O., D.N.A. Finger Printing Laboratory and they have visited the petitioner's business premises on 01-04-2007 and again taken the samples by conducting a panchanama, which are again sent for testing to the Seed Testing Laboratory, Yemmignur, Kurnool District.

11. Further it is stated that the second respondent vide proceedings dated 30.03.2007 has suspended the licence of the petitioner on the ground that the petitioner is in unauthorized possession of cotton seed stocks. It is alleged that the petitioner was found to be in possession of unlicensed stock of seed of dharma Bt cotton (470 Kgs), Sindu Bt cotton (1300 kgs) cotton seed stocks of M/s.Kisan Biogenes, Raj Bhavan Road, Hyderabad (122 packets) and cotton seed stocks of M/s. Indian Biogene Limited, Hyderabad (46 packets) and therefore, observed that it is violation of clause 3 (1) of the said Control Order, since the licence does not include these varieties/hybrids. It is also observed in the said orders dated 30.03.2007 the petitioner's firm has involved in deliberate production of genetically modified seed (Bt cotton seed) without permission. Therefore, it is violation of Rule 7(1), 8 and 9 (1) of Rules for the manufacture, use/import/export and storage of hazardous microorganisms or cells 1989 under Environmental Protection Act, 1986. It is also alleged that seed stocks were expired and no proper documents were produced indicating their disposal and it is held that it is violation of clause 8-A of the Control order.

12. Further it is stated that before suspension orders, a show cause notice

dated 16.03.2007 was issued and detailed explanation was submitted on 24.03.2007 denying all the allegations and thereafter, the suspension order dated 30.03.2007 was issued. The show cause notice dated 16.03.2007 reads as hereunder:

"SR Cell (1) 937/2004 **Commissionarate of Agriculture**
16/03/2007 **Hyderabad.**

SHOW CAUSE NOTICE

Sub: Seeds-M/s.Sri Sai Agritech, Mahabubnagar- Unauthorized possession of cotton seed stocks-Show Cause Notice –Issued-Regarding.

Ref: Inspection of premises of M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar district by a special squad from O/o. Commissionerate of Agriculture on 15/3/07.

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It is brought to the notice of the undersigned that M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar district is found possessed the following stocks of seed in the processing, packing and storage premises of M/s.Sri Sai Agritech located at Door No.1-133, Amistapur (V), Bhoothpur Mandal, during the inspection of the premises vide reference cited.

Seed stocks for which license is not issued: Dharma Bt cotton-470 Kgs, Sindhu Bt cotton-1300 Kgs. Cotton seed stocks of M/s.Kisan Biogenes, Rajbhavan Road, Hyderabad-122 packets, Cotton seeds stocks of M/s .Indian Biogene Ltd., Hyderabad-46 packets.

Seed stocks with expiry of validity: Cotton-Dharma-420 packets, Cotton-Sindhu-340 packets, Sunflower-Rahul-288 packets, jowar-Bapuji-21 quintals.

In this connection, it is informed that centralized seed license bearing no;83 Valid up to ; 25\6\2007, granted to M/S Sri Sai Agritech, Mahabubnagar does not include above said Bt cotton hybrids and cotton varieties of M/S kisan Biogenes, Rajbhavan Road. Hyderabad and M/S Indian Biogene Ltd, Hyderabad and these 2 firms are also not licensed in the

state to produce and market seed. Hence, possession of such seed stocks is a violation of Clause 3 (1) of Seeds (Control) Order , 1983.

Further, it is established that the firm has involved in deliberate production of genetically modified seed (Bt cotton seed) without following the procedures laid down by GEAC (Genetic Engineering Approval Committee) and seeking the permission from GEAC and keeping the licensing authority absolutely uninformed which is a violation of Rule 7(1), 8 and 9(1)of Rules for the Manufacture, Use/Import/Export and storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells, 1989 under Environmental Protection Act ,1986.

Besides, it is found that seed stocks of Cotton were expired and no proper documents were produced indicating their disposal, which is viewed as intention of the firm for sale of the expired seed, thus it is a violation of Clause 8 (A) of Seeds (control) Order, 1983 that attracts suitable action under Clause 15 (b) of Seeds (Control) Order, 1983..

In view of the above contraventions, M/S Sri Sai Agritech, Mahabubnagar is directed to show the cause, why the licence should not be cancelled or suspended under Clause 15 (b) of seeds (control) order, 1983 by the licensing authority , for the violations committed by the firm.

The explanation of the firm should reach this office within a period of 7 days from the date of receipt of this Show-Cause notice and in case of non-receipt of explanation within stipulated period, it is construed that M/S.,Sri Sai Agritech,Mahabubnagar has nothing to say and the action will be initiated under the provisions of seed laws, without any further notice.

Sd/-D.Rushendranath

Licensing Authority & Addl. Director of Agriculture II"

13. The order of suspension dated 30-03-2007 reads as hereunder:

"Proceedings of the Licensing Authority and Addl. Director of Agriculture II, Office of the Commissioner & Director of Agriculture, Andhra Pradesh,Hyderabad.

SR Cell (1) 264/2007 **Dt.30/03/2007**

Sub: Seeds-M/s.Sri Sai Agritech, Mahabubnagr, Unauthorized possession of cotton seed stocks- Opportunity of being heard given- Explanation found unsatisfactory-Licence suspended- Orders issued-Regarding.

Ref: 1)Inspection of premises of M/s. Sri Sai Agritech, Bhoothpur Mandal Mahabubnagar district by a special squad from O/o. Commissionerate of Agriculture on 15/3/07.
2)Show-Cause notice issued to M/s.Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar District vide letter No.SR Cell (1) 937/2004 dated 16//3/07.
3) Reply to M/s.Sri Sai Agritech, Bhoothpur Mandal,Mahabubnagar to the show cause notice dated 24/3/07.

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Through the reference 2nd cited, a show cause notice was issued to M/s.Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar since the firm is found to possess the unlicensed stocks of seed of Dharma Bt cotton (470 kgs). Sindhu Bt cotton (1300 kgs), cotton seed stocks of M/s. Kisan Biogenes, Rajbhavan Road, Hyderabad (122 packets). Cotton seed stocks of M/s. Indian Biogene Ltd, Hyderabad (46 packets) in the processing, packing and storage premises of M/s.Sri Sai agritech located at Door No.1-133, Amistapur (V), Bhoothpur Mandal, during the inspection of the premises vide reference 1st cited which is a violation of Clause 3 (1) Seeds (Control) Order, 1983 since the centralized seed licence bearing No.83 valid up to 25/6/2007 granted to M/s. Sri Sai Agritech, Mahabubnagar does not include these varieties/hybrids.

Based on this, it is also evident that the firm has involved in deliberate production of genetically modified seed (Bt cotton seed) without following the procedures laid down by GEAC (Genetic Engineering Approval Committee) and seeking the permission from GEAC and keeping the licensing authority absolutely uninformed which is a violation of Rule 7(1), 8 and 9 (1) of Rules for the Manufacture, Use/Import/Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells, 1989 under Environmental Protection Act, 1986.

Besides, it is found that seed stocks of Cotton Dharma (420 packets), Cotton Sindhu (340 packets), Sunflower Rahul (288 packets), Jowar Bapuji (21 quintals) were expired and no proper documents were produced indicating their disposal, which is viewed as intention of the firm for sale of the expired seed, thus it is a violation of Clause 8A of Seeds (Control)

Order, 1983 that attracts suitable action under Clause 15 (b) of Seeds (Control) Order, 1983.

In reply to the show cause notice furnished by the firm vide reference 3rd cited is analyzed and found unsatisfactory and unmaintainable.

ORDER:

Keeping in view of the above facts and the unsatisfactory reply furnished by M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabuibnagar vide reference 3rd cited, it is observed that the reply is found unmaintainable and unconvincing, thus the charges of violations have been established and found liable for action under Clause 15 (b) of Seeds (Control) Order, 1983.

Therefore, the Centralized Seed License bearing No.83 valid up to 25/6/2007 granted to M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar by Licensing Authority is hereby suspended till further orders, under Clause 15 of Seeds (Control) Order, 1983, after giving an opportunity of being heard as per the procedure.

Licensing Authority & Addl. Director of Agriculture II."

14. It also stated that it appears the Assistant Director of Agriculture, the Seed Testing Laboratory, Rajendernagar, Hyderabad, has submitted an analytical report on 4.4.2007 and as per the report, the cotton seed samples, which were drawn from dharma and sindhu varieties, were found the presence of Bt protein. The second respondent, who is licensing authority also vested with the powers either to suspend or cancel the licence, in gross violation of principles of natural justice has passed the orders dated 4.7.2007 cancelling the licence of the petitioner. The said order reads as hereunder:

"Proceedings of the Licensing Authority and Addl. Director of Agriculture II, Office of the Commissioner & Director of Agriculture, Andhra Pradesh, Hyderabad.

SR Cell (1) 264/2007 **Date:04-07-2007**

Sub: Seeds (Control) Order, 1983- M/s .Sri Sai Agritech, Mahabubnaar- Unauthorized possession of cotton seed stocks- Opportunity of being heard given- Explanation found unsatisfactory- Conformation of presence of Bt protein through analytical results- License cancelled- Orders

issued-

Regarding.

Ref: 1) Inspection of premises of M/s. Sri Sai Agrtech, Bhoothpur Mandal, Mahabubnagar district by a special squad from O/o. Commissionerate of Agriculture on 15/3/07.

2) Show–Cause notice issued to M/s. Sri Sai agritech, Bhoothpur Mandal, Mahabubnagar district vide letter No.SR Cell (1) 937/2004 dated 16/3/2007.

3) Reply of M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar to the show cause notice dated 24/3/2007.

4) Proceedings of the Licensing Authority and Addl. Director of Agriculture II, O/o. Commissionerate of Agriculture vide proceedings No .SR Cell (1) 264/2007, dated 30/3/2007.

5) Analytical report of ADA, Seed Testing Laboratory, Rejendernagar vide RoC No.931/06, dated 4/4/2007.

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Through the reference 2nd cited, a show cause notice was issued to M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar district since the firm is found to possess the unlicensed stocks of seed of Dharma Bt cotton (470 Kgs), Sindhu Bt. Cotton (1300 kgs), cotton seed stocks of M/s. Kisan Biogenes, Raj Bhavan Road, Hyderabad, an unlicensed dealer (122 packets), cotton seed stocks of M/s. Indian Biogene Ltd, Hyderabad, an unlicensed dealer (46 packets) in the processing, packing and storage premises of M/s.Sri Sai Agritech located at Door No.1-133, Amistapur (V), Bhoothpur Mandal, during the inspection of the premises vide reference 1st cited which is a violation of Clause 3(1) of Seeds (Control) Order, 1983 since the centralized seed license bearing No.83, valid up to 25/6/2007, granted to M/s. Sri Sai Agritech, Mahabubnagar does not include above mentioned varieties/hybrids.

Further, through a self declaration dt.15/3/2007 made by the Managing Director of M/s.Sri Sai agritech, Bhoothpur Mandal, Mahabubnagar district, it is confessed by him that varieties viz., Dharma and Sindhu are Bt. Cotton seed.

Based on this, it is also established that the firm has involved in deliberate production of genetically modified seed (Bt cotton seed) without following the procedures

laid down by GEAC (Genetic Engineering Approval Committee) and seeking the permission from GEAC and keeping the licensing authority absolutely uninformed which is a violation of Rule 7(1), & 8 and 9(1) of Rules for the Manufacture, Use/Import/Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells, 1989 under Environmental Protection Act, 1986.

Besides, it is found that seed stocks of cotton-Dharma (420 packets), cotton-Sindhu (340 packets), Sunflower-Rahul (288 packets), Jowar-Bapuji (21 quintals) were expired and no proper documents were produced by the firm indicating their disposal, which is viewed as intention of the firm for sale of expired seed stocks, thus it is violation of clause 8A of seeds (Control) Order, 1983 that attracts suitable action under clause 15(b) of seeds (Control) Order,1983.

The reply to the show cause notice furnished by the firm vide reference 3rd cited is examined and found unsatisfactory and unmaintainable. Accordingly, the centralized seed license bearing No.83 valid up to 25/6/2007 granted to the firm was suspended vide reference 4th cited.

Through the reference 5th cited, the ADA, Seed Testing Lab, Rajendranagar has furnished the analysis report for cotton seed samples drawn from Dharma and Sindhu varieties and conformed the presence of Bt protein to an extent of 90% seeds as positive in Dharma variety where as 100% seeds are positive for Bt protein in case of Sindhu variety, which has further established the violation of said rules under Environmental Protection Act, 1986.

ORDER:

Keeping in view of the above facts and the unacceptable reply furnished by M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar district vide reference 3rd cited, it is found that the reply is unmaintainable and unconvincing, thus the charges of violations of Seed laws and Environmental Protection Act have been established which attract actions under

Clause 15 (a) and (b) of Seeds (Control) Order, 1983.

Therefore, the Centralized Seed License bearing No.83 valid up to 25/6/2007 granted to M/s. Sri Sai Agritech, Bhoothpur Mandal, Mahabubnagar district by Licensing Authority and suspended earlier vide reference 4th cited, is hereby cancelled under Clause 15 of Seeds (Control) Order, 1983.

Licensing Authority & Addl. Director of Agriculture II"

15. It is also stated that the orders dated 4.7.2007 issued by the second respondent demonstrates that it is a prejudged order inasmuch as he refers to the show cause notice dated 16.3.2007 which was issued prior to suspending the licence and also refers to the reply given by the petitioner to show cause notice on 24.03.2007 which is also prior to the suspension order dated 30.03.2007. The suspension order dated 30-03-2007 was based on the show cause notice and the explanation submitted by the petitioner and the said explanation submitted to the show cause notice for suspension cannot be treated as an explanation for cancellation of the licence giving go-by to the procedure. It is also stated that the said order was made in violation of principles of natural justice. Since the impugned orders dated 4.7.2007 were passed cancelling the licence referring to the analytical report dated 4.4.2007 submitted by the Assistant Director, Seed Testing Laboratory, Rajendranagar. It is the minimum obligation to observe the principles of natural justice on the part of the licensing authority to put the petitioner on notice about the report received and call for his explanation giving independent reasons to show cause as to why the licence of the petitioner shall not be cancelled. Absolutely, without issuing any notice and opportunity based on the report of the Assistant Director of

Agriculture dated 4.4.2007, the licence of the petitioner was cancelled. It is also stated that after the first panchanama conducted by the Assistant Director of Agriculture, Rajandranagar, on the representation of the petitioner, the first respondent had sent three officers as special squad to conduct inspection of the stocks in his premises and who have also drawn the samples and sent the same for testing before the laboratory and the special squad sent the seed samples to the Seed Testing Laboratory at Yemmiganoor, Kurnool District and as per the said report, there is no Bt protein in the seed samples. Therefore, the licensing authority ought to have waited for the report of the Seed Testing Laboratory, Yemmiganoor, which was sent by the special squad came from the Commissioner's office and therefore, the findings arrived at by the licensing authority are bad in law.

16. Further aggrieved by the orders of the licensing authority in cancelling the licence of the petitioner by order dated 4.7.2007, the petitioner preferred an appeal before the first respondent under clause 16 of Control Order. Clause 16 dealing with the appeal reads as hereunder:

> "**Appeal:- Any person aggrieved by an order:-**
>
> **(a) refusing to grant, amend or renew the licence for sale, export or import of seeds;**
>
> **(b) suspending or cancelling any licence,**
>
> **may within sixty days from the date of the order, appeal to such authority as the State Government may specify in this behalf, and the decision of such authority shall be final:**
>
> **Provided that an application for appeal shall accompany an appeal fee of rupees fifty."**

17. It is stated that in the grounds of appeal, it was categorically stated by the petitioner that there are two different reports with regard to the presence of Bt protein in the samples drawn from the petitioner's business premises and both

the reports are contra to each other. So far as the allegation with regard to presence of stocks belonging to M/s. Kisan Biogene, Raj Bhavan Road, Hyderabad, and M/s. Indian Biogene Limited, Banjarahills, Hyderabad, it was stated that the seed stocks do not belong to the petitioner and the transporter by inadvertently has unloaded the seed stocks at petitioner's office premises, though they do not belong to him and also produced the way bill of M/s. New Famous Transport Company and which discloses that the said stocks belong to consignee M/s.K.Naga Raju, Hyderabad. Therefore, the petitioner requested the appellate authority to hold that the petitioner has not violated the conditions of licence as alleged by the licensing authority. With regard to the allegation of having seed stocks with expiry date i.e. Dharma cotton seed expired on 14.01.2007, Sindhu on 14.01.2007, and Sunflower (Rahul) on 4.12.2006 and the petitioner has got time for revalidation after conducting germination test till june,2007 and since the inspection took place only on 15.03.2007, there was ample time for the petitioner to subject the seeds for germination test till June,2007 since normally the seed will be sold only during the months of June and July of every year and requested the appellate authority to exonerate the petitioner from the misconceived allegations and set aside the orders of licensing authority dated 04.07.207. But unfortunately the appellate authority passed orders on 18.8.2007 confirming the orders of the licensing authority i.e, the appellate authority has upheld the cancellation of the petitioner's licence and since the petitioner is left with no other alternative remedy, the same is challenged by way of writ petition.

18. The said order dated 18.08.2007 reads as hereunder:

" The appellate authority has carefully examined the appellants written appeal, Defense Counsel's additional appeal and arguments taken place in the appellate authority

meeting vis-à-vis licensing authority's counter arguments and arrived at following conclusions:

i. **The appellate authority ignore the issues related to presence of Bt protein in non Bt cotton seed, in view of wide variation in two sets of the results obtained, and consider the following two acts commissioned by the appellant as straight violation of Seeds (Control) Order, 1983 under which the Centralized Seed License is issued by the licensing authority.**

ii. **Keeping the stock of cotton seed of two other unlicensed seed companies viz.. M/s. Kisan Biogenes, Rajbhavan Road, Hyderabad to a tune of 122 packets and M/s. Indian Biogene Ltd., Banjara Hills, Hyderabad to a tune of 46 packets, is considered as a gross violation of Clause 3 of Seeds (Control) Order, 1983 and amounts to be joining the hands with unauthorized and illegal traders of the seed, which is supposed to be a main source of spurious seed to the innocent farmers.**

iii. **The second act of keeping the stock of expired seed material of different crops in their prescribed unit size without bulking except Jowar, which is a prerequisite for reevaluation of quality status for revalidation, is also signifies the intention of appellant to make use of this material and also amounts to abating the act of selling seed material beyond validity period causing damage to the interest of farming community. Thus, violated the provisions of Clause 8 A of Seeds (Control) Order, 1983.**

On the basis of above findings, the appellate authority uphold the decision of licensing authority for cancellation of Centralized Seed License No. 83, dated 26/6/2001, valid up to 25/6/2007 of M/s. Sri Sai Agritech, Mahabubnagar and dismissed the appeal preferred by the aggrieved party to the appellate authority."

19. It is stated that both the authorities failed to consider the matter in proper perspective inasmuch as absolutely there is no violation of either conditions of licence or clauses of Control Order, or the provisions of the Seeds Act and no specific reasoning had been given by both the authorities for cancellation of the licence and the impugned orders are non-speaking orders and liable to be set-aside. Further, it is stated that the licence application is in Form-A and terms and conditions of licence are in Form- B and none of these forms postulates

that the licencee shall have the details printed in the licence with regard to the seed brands of the companies and alleging that the seized stocks, which bear the companies name, are not specifically stated in the licence, is itself a farce ground for the respondents to make such an allegation since the said allegation is beyond the scope and prescription made in the Control Order and the forms prescribed under clause 4 and 5 of the Control Order and therefore, the allegation itself is no statutory basis and therefore, any finding on such allegations does not stand the scrutiny of law and therefore, both the orders are liable to be set aside.

20. The appellate authority and also the original authority failed to take note of the fact that there was never an opportunity to the petitioner to submit his defence after the licence is suspended and before cancellation orders are passed and non-consideration of the said fact amounts to violation of principles of natural justice since the petitioner was condemned unheard of and therefore, the impugned orders are liable to be set-aside.

21. Further, it is stated that the petitioner had started the small seed business to eke-out his livelihood by self employment and with his hard work and good relationship with farmers, he could sustain in the business with meager income to make humble living and this living is snatched by the respondents by arbitrary exercise of powers without there being any evidence either oral or documentary and the so called statement relied upon by the respondents is a statement given by him by force and which cannot be a basis to come to the conclusion without there being any other evidence and therefore, viewed from any angle, the impugned orders are liable to be set-aside.

22. Clause 15 of the Control Order dealing with suspension and cancellation of licence reads as hereunder:

"Suspension/Cancellation of license:- The licensing authority may, after giving the holder of the license an opportunity of being heard, suspend or cancel the license on the following grounds, namely:

(a) that the licence had been obtained by misrepresentation as to a material particular; or

(b) that any of the provisions of this Order or any condition of license has been contravened."

23. In the counter affidavit filed by the second respondent, several facts had been specifically denied. In Para 3 of the counter affidavit in reply to Para 3 of the affidavit filed in support of the writ petition, it is specifically denied the statement of the petitioner that the proceedings of the 2nd respondent dated 04.07.2007 in canceling the petitioner's centralized seed licence and the orders of the 1st respondent and appellate authority dated 18.8.2007 as illegal, erroneous, irregular and contrary to provisions of the Seeds Act and the Control Order. The Proceedings No. SR Cell (1) 264/2007 dated 4.7.2007 of the Licensing Authority & Additional Director of Agriculture II, O/o. Commissioner and Director of Agriculture was issued for cancellation of licence of the petitioner in accordance with the clause 15 (a) of the Control Order read with clause 3 (1) of the Control Order, and clause 8 A of Seeds (Control) Amendment Order, 2006 and based on the violation of Rule 7(1), 8 and 9(1) of Rules for the Manufacture, Use/Import/Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells, 1989 under Environmental Protection Act, 1986, after establishing the contraventions of the petitioner and examining the reply to Show-Cause notice by the petitioner.

24. Averments made in Paras 4 and 5 of the affidavit filed in support of the writ petition also had been explained. Further it is averred that the licence was granted vide Licence No.83 and sale of seed on the following varieties/hybrids

had been permitted.

i. Seeds of all crops of notified varieties/hybrids.

ii. Private research varieties/hybrids for trial marketing:

Cotton:SSRC-555 (Dharma)SSRC-999 (Sindhu)

i. Private research varieties/hybrids for marketing:

Maize:SSMH-9848,SSMH-9849
Sunflower: SSHH-66 (Rahul), SSH-77 (Karna)
Jowar:SSJH-88 (Bapuji)
Hybrid Bhendi:SSBH-10 (Priyanka)
Chilli varieties:SSCV-33 (Dhanush), SSCV-44 (J.P.)
Hybrid Chilli:Varun (SSCH-11)

The licence was granted on 26.6.2001 for a period of three years and subsequently renewed up to 25.6.2007. The licence was expired on 25.6.2007 and thereafter it was not renewed and the firm has also not applied for renewal of the licence. Hence, the persuasion of writ petition does not arise.

25. Further, it is stated that the inspection of processing, packing and storage premises of M/s. Sri Sai Agritech, Door No.1-133, Amistapur (V), Bhoothpur (M) was conducted by the centralized squad deputed by Commissionerate of Agriculture along with the notified seed inspector of the division i.e., Assistant Director of Agriculture, Jadcherla on 15.3.2007 and found the following contraventions of provisions of the Seeds Act, the Control Order and the Environmental Protection Act, 1986 and Rules for the manufacture, Use/Import/Export and Storage of Hazardous Microorganism/Genetically Engineered Organisms or Cells, 1989.

26. Further it is stated that the result of re-analysis of seed samples are not acceptable in law and only the result of referral analysis under Section 16(2) of Seeds Act is valid. Hence, the result obtained on first analysis is considered for legal action.

27. Section 16 of the Seeds Act dealing with report of seed analyst reads as hereunder:

> **"Report of Seed Analyst: (1) The Seed Analyst shall, as soon as may be after the receipt of the sample under sub-section (2) of Section 15, analyze the sample at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.**
>
> **(2) After the institution of a prosecution under this Act, the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending any of the samples mentioned in Clause (a) or Clause (c) of sub-section (2) of Section 15 to the Central Seed Laboratory for its report and on receipt of the application, the Court shall first ascertain that the mark and the seal or fastening as provided in Clause (b) of sub-section (1) of Section 15 are intact and may then dispatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.**
>
> **(3) The report sent by the Central Seed Laboratory under the sub-section (2) shall supersede the report given by the Seed Analyst under sub-section (1).**
>
> **(4) Where the report sent by the Central Seed Laboratory under sub-section (2) is produced in any proceedings under Section 19, it shall not be necessary in such proceedings to produce any sample or part thereof taken for analysis."**

28. The allegation relating to the grudge of Assistant Director of Agriculture against the petitioner had been denied.

29. Further it is stated that the petitioner was involved in serious contraventions as indicated supra and on finding these contraventions of provisions of the Seeds Act, the Control Order and Environmental Protection

Act, 1986 and Rules for the manufacture, Use/Import/Export and Storage of Hazardous microorganism/Genetically Engineered Organisms or Cells, 1989, the centralized seed licence of the petitioner was suspended through proceedings No.SR Cell(1) 264/2007, dated 30/3/2007 duly issuing a Show Cause notice dated 16/3/2007 as an opportunity of being heard and after finding the reply of the petitioner dated 24/3/2007 to Show Cause notice as not convincing by the licensing authority.

30. Further specific stand had been taken that the licensing authority had issued show cause notice to the petitioner as per the clause 15 of the Control Order as an opportunity of being heard, prior to suspension of license of the petitioner. Further it is stated that considering the magnitude of contraventions of non-rectifiable nature and on finding the Bt protein percentage conformation to standard set forth of Bt. Cotton Hybrid added to the firm has not applied for renewal of licence which was expired on 25.6.2007, the licensing authority has cancelled the seed license vide proceedings No.SR Cell (1) 264/2007, dated 4.7.2007 after careful examination of the issues and violation of various mandatory provisions in the seed laws.

31. Further it is stated that the stand taken by the petitioner in Para 12 of the affidavit in support of the writ petition to be examined under the following circumstances:

A show cause notice was issued to the petitioner prior to suspension of licence.

On finding the reply of the petitioner to show cause notice as unconvincing and un-justifiable, the licence was suspended by the licensing authority.

After critically examining the analytical reports of ADA, Seed Testing

Lab, Rajendranagar with regard to the multiple violations committed by the petitioner, the license was cancelled by the licensing authority.

32. Therefore, the allegation of the petitioner that opportunity of being heard was not given to the petitioner prior to cancellation of license, is denied as such the grounds of suspension of license are further examined duly considering the analytical reports and complexity and magnitude of violations prior to cancellation of license.

It is also informed that the petitioner has not only confessed orally but also discharged a declaration signifying Dharma and Sindhu seed as Bt cotton seed, at the time of inspection on 15.3.2007 which was later found conforming to the standards of Bt. Protein set forth for Bt. Cotton Hybrid seeds.

33. Further it is stated that as per the notification No.F.No.17-8/2005-SD IV, G.O.I., dated 5.11.2005 on Bt. Protein, the samples were drawn from seed stocks on 15.3.2007 and sent for analysis to the Seed Testing Laboratory, Rajendranagar subsequently on representation of petitioner, again samples were drawn on 01. 04.2007 and sent to Seed Testing Laboratory, Yemmiganur. As already stated above, the petitioner ought not have requested to send the samples for the purpose of analysis on second time as the provisions of seeds laws do not have permit such procedure but due to inadvertently the request of the petitioner was considered and sent samples second time to the Seed Testing Laboratory, Yemmiganur, Kurnool District. Then once report has been received, the question of seeking analysis report of second time is not in consonance with the provisions and accordingly the analysis report obtained second time cannot be considered as it cannot be treated as valid.

34. It is also stated that as per clause 16 of the Control Order, the aggrieved person against the orders of cancellation of license by the licensing authority may prefer an appeal to the appellate authority and accordingly in this case, the appellate authority had admitted the appeal and examined the grounds of appeal as indicated below with reference to the relevant provisions of the Control Order and finally resolved the issue based on the merits of the case.

i. Not aware of different provisions of seed laws applicable specially for production of Bt. Cotton seed

ii. Not aware whether bulk cotton seed stock stored is of Bt cotton or non Bt cotton.

iii. The expired seed stock are meant for revalidation or safe destroyal based on the standards of seed which is to be tested.

iv. Seed Stock of M/s.Kisan Biogenes, Rajbhavan Road, Hyderabad and M/s. Indian Biogene Ltd., Banjara Hills, Hyderabad are wrongly delivered to the premises by the transport authorities.

v. Testing of cotton seed samples drawn for the second time indicates that there is no Bt protein.

vi. To examine the case on similar grounds of M/s Swaraj Agritech Seeds Ltd., whose cancelled license was restored.

35. It is also stated that the appellate authority heard the appeal on 17.8.2007 and took the decision on the following grounds:

a) The appellant has not only confessed orally but also given a declaration stating Dharma and Sindhu seed as Bt cotton seed.

b) As per the legal validity, the result of first set of samples which were drawn from the seed stock at first instance prior to seizure is considered for taking action under clause 15 of the Control Order.

c) The licensing authority said that both the seed producers of cotton bearing name of M/s.Kisan Biogenes, Rajbhavan Road, Hyderabad on 122 packets and M/s. Indian Biogene Ltd., Banjara Hills, Hyderabad on 46 packets were not issued any license by the licensing authority and availability of such unauthorized seed stock bearing the name of fictitious seed companies in the premises to use in the peak season of cotton sale cannot be attributed to the instance of mis-sent as fabricated by the appellant and it is an attempt to mislead this court.

d) As per the procedure of revalidation, all such returned stock from different places to the seed company in the prescribed unit size, needs to be bulked to attain homogeneity in the seed lot before drawl of representative sample for evaluation of germination status to take up repacking for revalidated period of 6 months. Whereas keeping the stock in the unit size pouches till March,2007 i.e. month of inspection after expiry of season of sowing from about preceding July, signifies the intention of appellant to make use of the expired material for selling to the illiterate poor farmers illegally and considered as an abetment for unauthorized trade.

36. Thus, the appellate authority has carefully examined the case and arrived at a conclusion of upholding the orders of licensing authority and dismissed the appeal of M/s.Sri Sai Agritech, Mahabubnagar which is final action on basis of clause 16 of the Control Order. Thus the statement of the petitioner that appellate authority has confirmed the findings of the licensing authority for cancellation of license without reason, is totally wrong and also misleading.

37. It is also further stated that on the basis of established contraventions as indicated supra, the licensing authority has cancelled the license of the petitioner and based on the findings indicated below, the appellate authority has upheld the decision of licensing authority for cancellation of Centralized Seed License No.83, dated 26.6.2001, valid up to 25.6.2007 of M/s.Sri Sai Agritech, Mahabubnagar and dismissed the appeal preferred by the aggrieved party to the appellate authority:.

(i) The appellate authority has left the issue of advertent production of Bt. Cotton Seed in view of future course of legal action under Environmental Protection Act, 1986 and restricted its verdict within jurisdiction of the Control Order.

(ii) Keeping the stock of cotton seed of two other unlicensed seed companies viz., M/s.Kisan Biogenes, Rajbhavan Road, Hyderabad to a tune of 122 packets and M/s.Indian Biogene Ltd., Banjara Hills, Hyderabad to a tune of 46 packets, is considered as a gross violation of clause 3 of the Control Order and amounts to be joining the hands with unauthorized and illegal traders of the seed, which is supposed to be a main source of spurious seed to the innocent farmers.

(iii) The second act of keeping the stock of expired seed material of different crops in their prescribed unit size without bulking except Jowar,

which is a prerequisite for re-evaluation of quality status for revalidation, is also signifies the intention of appellant to make misuse of this material and also amounts to abating the act of selling seed material beyond validity period causing damage to the interest of farming community. Thus, violated the provisions of clause 8 A of Seeds (Control) Amendment Order, 2006.

38. Thus the statement of the petitioner that licensing authority and appellate authority have failed to consider the matter in correct perspective without proper reasoning for their actions, is not correct.

39. It is also stated that based on the petitioner's requisition, the license was granted as per the procedure duly indicating the names of different hybrids/varieties on the basis of documents furnished by the firm and after inspecting the R & D premises of the firm. Further it is stated that in view of multiple contravention of various mandatory provisions of the Act, show cause notice was issued on 16.3.2007 calling for explanation, accordingly the petitioner submitted his explanation on 24.3.2007 thereafter orders were passed on 30.3.2007 by suspending the license of the petitioner. In the meanwhile the period of license comes to an end by 25. 6.2007 but the petitioner has not submitted any application for renewal of his license. Taking into consideration of the provision of clause 15 of the Control Order, opportunity should be given for suspension/ cancellation. In this case, the petitioner was already given an opportunity before passing suspension orders and taking into consideration of the fact that the petitioner did not submit any application for renewal of license and in those circumstances, orders were passed by cancelling the license on 4.7.2007. Against which an appeal lies as per clause 16 of the Control Order to the Commissioner & Director of Agriculture. Accordingly the petitioner filed an

appeal. But in the appeal grounds, the petitioner has not raised the grounds which were raised in the Writ Petition including affording opportunity before passing cancellation orders. In the petition challenging the orders of the Appellate Authority and confirming the orders of the original authority wherein his license was cancelled. In such matters, the court relief by issuance of Writ of certiorari and the Supreme Court has laid down certain parameters while issuing writ of certiorari by the High Courts. The High Court should not interfere except in a jurisdiction errors. In the present case there is no allegation that the impugned orders were passed without complying the principles of natural justice and without following with due procedure contemplated under the Act when the authorities who passed the orders are empowered under the Act and therefore this court should not normally interfere as per the judgment of the Supreme Court. Reliance also was placed in **Surya Dev Rai Vs. Ram Chander Rai & others.**[1]

40. Further a specific stand had been taken that the license was granted on 26.6.2001 and it was valid up to 25.6.2007. But as the petitioner firm had not made any such application for renewal of license, the firm is not entitled to do business. Hence, it is stated that the writ petition is devoid of merit and same is liable to be dismissed.

41. The show cause notice, the order of suspension and the order of cancellation by the primary authority and the order of the appellate authority as well already had been specified supra. The reasons recorded in the said orders impugned being self explanatory, they nee not be elaborated again. Whatever reasons may be, there was no renewal of said licence beyond the specified period also is not in serious controversy. Clause 15 of the Control Order no doubt specifies that the licensing authority may, after giving the holder of the

licence an opportunity of being heard, suspend or cancel the licence on the following grounds: that the license had been obtained by misrepresentation as to a material particular; or that any of the provisions of this Order or any condition of licence has been contravened. Much emphasis had been laid down on non-giving of reasonable opportunity and non-compliance of clause 15 of the Control Order. It is pertinent to note that the primary authority made an order and the matter was carried by way of appeal and the appellate authority also recorded reasons and confirmed the same. Virtually what is being prayed for is a writ of certiorari to quash the impugned orders. In the light of the findings recorded in detail both by the primary authority and the appellate authority, this court is thoroughly satisfied that the contention advanced that the orders are in violation of principles of natural justice and no reasonable opportunity as such had been given, cannot be accepted. May be that no separate notice as such had been preceded to the order of cancellation. But however, on careful analysis of the facts and circumstances, this court is thoroughly satisfied that the primary authority had observed the principles of natural justice by giving reasonable opportunity. The matter was carried by way of appeal. The appellate authority also recorded reasons and hence in the light of the provisions of the Seeds Act and also the Control Order, this court is satisfied that the impugned order in the present writ petition does not suffer from any legal infirmity warranting interference at the hands of this court.

42. Accordingly, the writ petition is liable to be dismissed and is hereby dismissed. No costs.

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P.S.NARAYANA,J

05 -12-2007

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[1] (2003) 6 SCC 675